# MQuest Sdn Bhd (formerly known as Maju Quest Resources Sdn Bhd) & Anor v Adil Cerah Sdn Bhd & Ors

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO S7–21–215 OF 2007
AZMAN ABDULLAH JC
23 APRIL 2008

*Land Law — Indefeasibility of title and interests — Registration, effect of — Bona fide purchaser and registered proprietor of land — Whether ownership vested in third defendant*

The third defendant was the registered proprietor of the land held under PN 29466, Lot No 11, Seksyen 15, Bandar Shah Alam. The said property was purchased from the first defendant and the full purchase price had been paid to it. The third defendant brought this application against the first and second plaintiffs for the following reliefs: (i) the first and second plaintiff to give vacant possession of the land to the third defendant with immediate effect; (ii) alternatively, that they pay rental to the third defendant, a sum of RM40,000 per month, until final disposal of this matter and the said rental is to be paid into a joint solicitors account. Further, that the first and second plaintiffs insure the property and that the third defendant be allowed to enter the said land to inspect and take an inventory; and (iii) an injunction to restrain the first and second defendants from trespassing and/or remaining from and/or using the said land.

**Held**, allowing the application in part with costs:

(1) The third defendant was entitled to the reliefs in respect of para (i) and (ii) above because the third defendant was a bona fide purchaser as well as the registered proprietor of the said land. He had bought the land from the first defendant (see para 4(iv)).

(2) The transfer of the said land to the third defendant could only be defeated if it was established and proven that the transaction was actually tainted by fraud and that the third defendant was a party to it (see para 4(iii)).

(3) Pursuant to the said order, an application for an injunction was declined because there was no reason for the third defendant to restraint the first and second plaintiffs to enter into the said land as the order precluded the first and second plaintiffs from acts of trespass on the said land (see para 5).

**[Bahasa Malaysia summary**

Defendan ketiga adalah tuan punya berdaftar atas tanah yang dipegang di bawah PN 29466, Lot No 11, Seksyen 15, Bandar Shah Alam. Harta tersebut telah dibeli daripada defendan pertama dan keseluruhan harga belian telah pun dibayar kepadanya. Defendan ketiga telah membawa permohonan ini terhadap plaintif pertama dan kedua untuk relief-relief berikut: (i) plaintif pertama dan kedua hendaklah memberikan milikan kosong tanah tersebut kepada defendan ketiga dengan berkuat kuasa serta-merta; (ii) secara alternatif, bahawa mereka membayar sewaan kepada defendan ketiga, sejumlah RM40,000 sebulan, sehingga penyelesaian kes ini dan sewaan tersebut hendaklah dibayar ke dalam akaun bersama peguam. Selanjutnya, plaintif pertama dan kedua melindungi harta tersebut dan defendan ketiga dibenarkan untuk memasuki tanah tersebut untuk memeriksa dan mengambil inventori; dan (iii) injunksi bagi menghalang defendan pertama dan kedua daripada menceroboh dan/atau kekal dan/atau menggunakan tanah tersebut.

**Diputuskan**, membenarkan sebahagian permohonan dengan kos:

(1) Defendan ketiga adalah berhak ke atas relief-relief berkaitan dengan perenggan (i) dan (ii) di atas kerana defendan ketiga adalah pembeli bona fide dan juga adalah tuan punya berdaftar tanah tersebut. Beliau telah membeli tanah tersebut daripada defendan pertama (lihat perenggan 4(iv)).

(2) Pindahmilik tanah tersebut kepada defendan ketiga hanya boleh disangkal jika ianya dipastikan dan dibuktikan bahawa transaksi tersebut sebenarnya dicemari dengan fraud dan bahawa itu defendan ketiga adalah pihak kepadanya (lihat perenggan 4(iii)).

(3) Menurut perintah tersebut, satu permohonan untuk injunksi adalah ditolak kerana tiada sebab untuk defendan ketiga menghalang plaintif pertama dan kedua daripada memasuki tanah tersebut seperti mana perintah telah menghalang plaintif pertama dan kedua daripada melakukan pencerobohan ke atas tanah tersebut (lihat perenggan 5).]

**Notes**

For cases on registration, effect of indefeasibility of title and interests, see 8 *Mallal's Digest* (4th Ed, 2006 Reissue) paras 2988–2990.

**Cases referred to**

*Teh Bee v Maruthamuthu* [1977] 2 MLJ 7 (folld)

*Michael Chow (Michael Chow) for the plaintiffs.*
*Jasbeer Singh (Jasbeer, Nur & Lee) for the first and second defendants.*
*Third defendant in person.*

**Azman Abdullah JC:**

**[1]** This is the third defendant's application vide summons in chambers (encl 15) for the following reliefs namely:

(b)(i) that the first and second plaintiffs give vacant possession of the land known as PN 296466, Lot 11, Seksyen 15, Bandar Shah Alam, Daerah Petaling, Selangor to the third defendant with immediate effect or alternatively.

(b)(ii) that the first and second plaintiffs pay rental to the third defendant a sum of RM40,000 per month beginning from 23 August 2007 until final disposal of this matter whereby the said rental would be paid into a joint solicitors account. Further, the first and second plaintiff are to insure the property on the said land for a sum of not less than RM6,000,000 and that the third defendant be allowed to enter the said land to inspect and take an inventory.

(b) An injunction to restrain the first and second defendants from trespassing and/or remaining from and/or using the said land.

**[2]** After having perused all written submissions filed by both respective parties herein, I granted order in terms in respect of para b(i) and (ii) with costs and disallowed para (b) of encl 15.

BACKGROUND

**[3]** The third defendant is the registered proprietor of the land held under PN 29466, Lot 11, Seksyen 15, Bandar Shah Alam ('the said land'). In this case, the said land is the subject matter of the dispute in the main action. The third defendant bought the said land from the first defendant through a sale and purchase agreement dated 10 August 2007 for a purchase price RM6,000,000 and the full purchase price was paid to the first defendant. The third defendant being a bona fide purchaser of the land for value and

registered proprietor of the land in the document of title brought this application herein against the first and second plaintiffs for the reliefs prayed vide encl 15.

THE COURT'S OPINION

**[4]** In this regard, I am of the view that the third defendant is entitled to the reliefs in respect of para b(i) and (ii) of encl 15 because:

(i) Firstly, I find that the third defendant has no connection with other parties to this suit save for the sake and purchase transaction that was entered with the first defendant.

(ii) Secondly, the first and second plaintiffs' statement of claim discloses no cause of action against the third defendant as the first and second plaintiffs pleaded that the transaction in dispute in this suit was only between the first and second plaintiffs.

(iii) Thirdly, the third defendant bought the land from the first defendant. To my mind, the transfer of the said land to the third defendant can only be defeated if it is established and proven that the transaction was actually tainted by fraud and the third defendant was a party to it.

(iv) Lastly, the third defendant is in a bona fide purchaser as well as the registered proprietor of the said land. Here, I am persuaded to follow the case of *Teh Bee v Maruthamuthu* [1977] 2 MLJ 7 where the court held that under the Torrens system 'the register is everything'. Therefore, based on this authority, it is my decision that the third defendant is right to claim possession of the said land.

**[5]** Therefore, I conclude that the first and second plaintiffs give vacant possession of the said land to the third defendant with immediate effect with costs or alternatively, the first and second plaintiffs who are in continued occupation of the said land to pay rental to the third defendant a sum of RM40,000 per month beginning from 1 September 2007 until the final disposal of this matter with costs, whereby the said rental would be paid into a joint solicitors account. Further, the third defendant and/or its employees or servants or agents be allowed to enter the said land to inspect and take an inventory within 1 month from the date of service of this order upon the plaintiffs. Pursuant to this order, I decline to grant the injunction against the first and second plaintiffs because to my mind, there is no reason now for the third defendant to restraint the first and second plaintiffs to enter into the

said land as this order precludes the first and second plaintiff from acts of trespass on the said land.

*Order accordingly.*

Reported by Ashgar Ali Ali Mohamed